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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 ATLANTIC CONSTRUCTION  
11 FABRICS, INC., et al.,

12 Plaintiffs,

13 v.

14 METROCHEM, INC., et al.,

15 Defendants.  
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CASE NO. C03-5645BHS

ORDER GRANTING  
PLAINTIFFS' MOTION TO  
LIFT STAY AND ENTER  
AMENDED SCHEDULING  
ORDER

18 This matter comes before the Court on Plaintiffs' Motion to Lift Stay and Enter  
19 Amended Scheduling Order (Dkt. 84). The Court has considered the pleadings filed in  
20 support of and in opposition to the motion and the remainder of the file and hereby grants  
21 the motion for the reasons stated herein.

22 **I. PROCEDURAL BACKGROUND**

23 Plaintiffs instituted this action in the United States District Court for the Western  
24 District of Virginia, Harrisonburg Division, for patent infringement and breach of a  
25 settlement agreement arising out of previous litigation. Dkt. 84. On November 17, 2003,  
26 the action was transferred to this district and subsequently assigned to the Honorable  
27 Franklin D. Burgess. Dkt. 26.  
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1 On December 18, 2003, Plaintiffs Atlantic Construction Fabrics, Inc., and George  
2 E. Logue, Jr. filed an Amended Complaint alleging patent infringement and breach of  
3 contract against Defendants Metrochem, Inc., Spider Environmental, Inc., Roni R. Sasaki,  
4 and Derek A. Sasaki. Dkt. 38.

5 On April 14, 2005, the Court issued an Order For Stay of Proceedings Pending  
6 Resolution of Reexamination of U.S. Patent No. 5,575,925 in the Patent and Trademark  
7 Office. Dkt. 64.

8 On August 1, 2007, the action was reassigned to the undersigned. Dkt. 82.

9 On July 17, 2008, Plaintiffs filed a Motion to Lift Stay and Enter Amended  
10 Scheduling Order. Dkt. 84. On July 28, 2008, Defendants responded. Dkt. 85. On  
11 August 1, 2008, Plaintiffs replied. Dkt. 85.

## 12 II. DISCUSSION

13 It is uncontested that the U.S. Patent and Trademark Office will soon issue the  
14 reexamination certificate for Patent No. 5,575925. Dkt. 84 at 2-3; Dkt. 85 at 1. It is also  
15 uncontested that this is sufficient reason to lift the stay in this matter. The parties,  
16 however, do contest whether a new scheduling order should be issued by the Court.  
17 Plaintiffs claim that the matter should proceed to trial. Dkt. 91 at 1-2. Defendants argue  
18 that their pending summary judgment motion will resolve all of the issues in this matter  
19 and, therefore, the Court should not enter a scheduling order. Dkt. 85 at 1-2. While  
20 Defendants' optimism is appreciated, Plaintiffs have a right to a trial date and Defendants  
21 have not provided authority for the proposition that the Court should delay setting that  
22 trial date because of a pending summary judgment motion.


## 23 III. ORDER

24 Therefore, it is hereby

25 **ORDERED** that Plaintiffs' Motion to Lift Stay and Enter Amended Scheduling  
26 Order (Dkt. 84) is **GRANTED**. The parties are **ORDERED** to confer and provide the  
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1 Court with a combined Joint Status Report and Supplemental Discovery Plan no later  
2 than September 12, 2008.

3 DATED this 14th day of August, 2008.

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7 BENJAMIN H. SETTLE  
8 United States District Judge  
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